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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,887	11/15/2000	Barry Jay Weber	RCA90,206	5241

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EXAMINER

LAZARO, DAVID R

ART UNIT PAPER NUMBER

2155

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/712,887

Applicant(s)

WEBER ET AL.

Examiner

David Lazaro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the amendment filed 07/19/2004.
2. Claims 1 and 17-21 were canceled.
3. Claims 2-4, 7-9 and 12 were amended.
4. Claims 2-16 are pending in this Office Action.
5. The Objections to the drawings are withdrawn.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
-

7. Claims 13-16, 2, 3, 7, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monteiro in view of U.S. Patent 6,205,480 by Broadhurst et al. (Broadhurst).

8. With respect to Claim 13, Monteiro teaches a system for processing broadcast multimedia program content and advertisements to provide a composite program datastream having multimedia data content and user targeted advertisements to multiple different users (Col. 1 lines 5-15), comprising: a condition access processor operable to concurrently receive broadcast multimedia program content from multiple sources (Col. 4 lines 18-32); a scheduler operable to schedule time of insertion of a designated advertisement into selected broadcast multimedia program content (Col. 16

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lines 29-40); and a multiplexer operable to provide multiple users with individualized composite program datastreams by performing in parallel for multiple users: insertion of a designated advertisement into a selected multimedia program content at a scheduled insertion time to form a composite program datastream (Col. 7 lines 60-65, *Interpreted to mean insertion may occur at the Media Server*); and coupling of said composite program datastream to a corresponding user of the multiple users (Col. 5 line 65 – Col. 6 line 5). Monteiro does not explicitly disclose the condition access processor determining authorization of the multiple broadcast sources. Broadhurst teaches systems often employ some type of authorization before access is given to the associated services or resources (Col. 1 lines 11-29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Monteiro and modify it as indicated by Broadhurst such that the system further comprises a condition access processor operable to determine authorization of multiple broadcast sources to concurrently provide broadcast multimedia program content to the system. One would be motivated to have this as it provides security and prevents unauthorized use (Col. 1 lines 11-29).

9. With respect to Claim 14, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 and further teaches said conditional access processor determines authorization of a broadcast source to provide broadcast multimedia program content based on at least one of (a) a broadcaster ID, and (b) a password (Col. 1 lines 11-15 of Broadhurst).

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10. With respect to Claim 15, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 and further teaches said conditional access processor includes a decryption function to decrypt at least one of (a) encrypted broadcast multimedia program content, and (b) an encrypted authorization code or password (Col. 3 lines 61-62 of Broadhurst).

11. With respect to Claim 16, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 and further teaches said multiplexer repeats said composite program datastream by mapping stored data comprising said composite program datastream to provide multiple stored copies of said composite program datastream for coupling to multiple users to enable scalable expansion of broadcast of said composite program datastream (Col. 5 line 65 – Col. 6 line 5 and Col. 3 lines 55-59 of Monteiro).

12. With respect to Claim 2, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 and further teaches said broadcast multimedia program content comprises at least one of (a) streamed audio data, (b) streamed video data, (c) voice representative data, (d) voicemail data, and (e) a radio or video broadcast (Col. 4 lines 18-32 of Monteiro).

13. With respect to Claim 3, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 and further teaches said scheduler receives and pre-caches advertisements from multiple sources to provide candidate advertisements for selection of said designated advertisement for insertion in said selected multimedia program content at said scheduled insertion time (Col. 4 lines 43-54 and Col. 1 lines 11-15 of Monteiro).

14. With respect to Claim 7, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 and further teaches said multiplexer repeats said composite program datastream by mapping stored data comprising said composite program datastream to provide multiple stored copies of said composite program datastream for coupling to multiple users to enable scaleable expansion of broadcast of said composite program datastream (Col. 5 line 65 – Col. 6 line 5 and Col. 3 lines 55-59 of Monteiro).

15. With respect to Claim 8, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 and further teaches said multiplexer tracks a user connection (Col. 8 lines 4-11 and Fig. 5 of Monteiro) and maintains a database of user connection related statistics (Col. 3 lines 39-54 of Monteiro) comprising at least one of (a) user favorite program sources (Col. 3 lines 50-54 of Monteiro), (b) number of advertisements broadcast (See Claim 5 and 6 of Monteiro), (c) number of users receiving said composite program datastream (Col. 3 lines 42-44 of Monteiro), and (d) length of user connection to a particular composite program datastream (Col. 3 lines 50-54 of Monteiro).

16. With respect to Claim 12, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 and further teaches a user profile database operable to allocate one of a plurality of available different advertisements for delivery to an individual user based on previously compiled user preference data in said user profile database (Col. 16 lines 34-41 of Monteiro); and a data acquisition processor operable to compile user preference information used in said user profile database based on prior user program selection history (Col. 16 lines 34-41 of Monteiro).

17. Claims 4-6 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monteiro in view of Broadhurst as applied to claim 13 above, and further in view of U.S. Patent Application Publication 2001/0023436 by Srinivasan (Srinivasan).

18. With respect to Claim 4, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 but does not explicitly disclose scheduling information provided by either a broadcast source or a source of the designated advertisement. Srinivasan teaches in a similar system that the scheduling information for insertion of a designated advertisement can be provided either by the broadcast source of a selected broadcast program, the advertisement source, or by any other prior arrangement (Page 17 [0198]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Monteiro in view of Broadhurst and modify it as indicated by Srinivasan such that said scheduler schedules insertion of said designated advertisement into said multimedia program content based on at least one of (a) scheduling information provided by a broadcast source of said selected broadcast multimedia program, and (b) scheduling information provided by a source of said designated advertisement. One would be motivated to have this since it is a common way for content providers to sell advertising slots (Page 17 [0198] of Srinivasan).

19. With respect to Claim 5, Monteiro in view of Broadhurst and in further view of Srinivasan teaches all the limitations of Claim 4 and further teaches said scheduling information contains advertisement scheduling information covering multiple broadcast multimedia programs (Page 17 [0198] of Srinivasan).

20. With respect to Claim 6, Monteiro in view of Broadhurst and in further view of Srinivasan teaches all the limitations of Claim 4 and further teaches said scheduling information provided by a broadcast source comprises at least one of (a) information indicating time slots available for advertisement insertion in said broadcast multimedia program (Page 17 [0198] of Srinivasan), (b) markers in said selected broadcast multimedia program indicating an advertisement insertion time slot (Page 10 [0112] of Srinivasan), and (c) information for identifying advertisement insertion time slots from time stamp indications (Page 20 [0228] of Srinivasan).

21. With respect to Claim 9, Monteiro in view of Broadhurst teaches all the limitations of Claim 13 but does not explicitly disclose dynamically reallocating advertisements targeted to a user during broadcast in response to a command by selecting an advertisement from a plurality of available advertisements of a suitable duration.

Srinivasan teaches dynamically reallocating advertisements targeted to a user during broadcast in response to a command by selecting an advertisement from a plurality of available advertisements of a suitable duration (Page 18 [0204] and Page 19 [0215]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Monteiro in view of Broadhurst and modify it as indicated by Srinivasan such that said multiplexer dynamically reallocates advertisements targeted to a user during broadcast of said composite program datastream in response to a command by selecting an advertisement from a plurality of available advertisements of duration suitable for a time slot at said scheduled insertion

time. One would be motivated to have this as this allows for better targeting of advertisements based on the latest user statistics (Page 19 [0215]).

22. With respect to Claim 10, Monteiro in view of Broadhurst and in further view of Srinivasan teaches all the limitations of Claim 9 and further teaches a locally source advertisement is selected for said time slot in preference to a non-locally sourced advertisement (Page 16-17 [0192] of Srinivasan).

23. With respect to Claim 11, Monteiro in view of Broadhurst and in further view of Srinivasan teaches all the limitations of Claim 10 and further teaches an error processor operable to parse said composite program datastream to detect error, and including an error concealment function operable to reduce the consequences of a detected error (Col. 7 lines 12-31 of Monteiro).

Response to Arguments

24. Applicant's arguments filed 07/19/04 have been fully considered but they are not persuasive.

25. Applicants argue - *"These techniques from Broadhurst, neither alone or in combination with the teaches of the Monteiro reference, do not disclose or suggest how to authorize "multiple broadcast sources to concurrently provide broadcast multimedia program content", as claimed in Claim 13."*

- a. In re Keller, Terry, and Davies, 208 USPQ 871 (CCPA 1981) states,
"Test of obviousness is not whether features of secondary reference may be bodily incorporated into primary reference's structure, nor whether claimed invention is expressly suggested in any one or all of references;

rather, test is what combined teachings of references would have suggested to those of ordinary skill in art.”

Taking this into consideration, Monteiro teaches multiple broadcast sources accessing the system of Monteiro in order to concurrently provide broadcast multimedia program content (Col. 4 lines 18-32). The teachings of Broadhurst would generally suggest that access to a system can require an authorization process in order to provide security and guard against unauthorized usage (Col. 1 lines 11-29). This is sufficient to teach “authorization” since the claimed subject matter of Claim 13 is broadly stated and does not require any specific details or techniques to carry out or determine the “authorization”. The combined teaches of the references would suggest that security can be provided to the system of Monteiro by requiring authorization of the multiple broadcast sources. As such, the combination of Monteiro and Broadhurst would teach “a conditional access processor operable to determine authorization of multiple broadcast sources to concurrently provide broadcast multimedia program content to the system.”

26. Applicants argue - *“Moreover without the teachings of the Applicants’ invention, the operation of the Examiner’s combination of Monteiro with Broadhurst would be unduly complex and inoperable.”*

b. With regards to the combination being “unduly complex”, the Applicants do not give specific detail and explanation as to what elements of the combination make it “unduly complex” in regards to the claimed subject matter. Furthermore, the transitional term “comprising” is used in Claim 13. The MPEP states in the

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second paragraph of 2111.03 [R-2], *"The transitional term 'comprising', which is synonymous with 'including,' 'containing,' or 'characterized by,' is inclusive or open-ended and does not exclude additional, unrecited elements or method steps."* Thus, the claimed subject matter is open-ended which does not exclude complex functionality.

With regards to the combination being "inoperable", the Applicants do not provide sufficient evidence as to how the combination is "inoperable". While Applicants make reference to a "scheduler" and a "multiplexer" of the claimed invention, the claim language does not specify a specific relationship between these elements and the authorization process. The Applicants do not provide explanation as to why the system or any elements of Monteiro would be rendered inoperable if combined with the teachings of Broadhurst.

27. Applicants argue - *"This claimed scheduler and multiplexer are capable of operating in view of multiple broadcast sources which may or may not be concurrently available because of the operation of the claimed conditional access processor...Specifically, how would a scheduler system from either Monteiro or Broadhurst, alone or in combination, be capable of scheduling advertising for broadcast sources that may or may not be available without using the teachings from the Applicants' claimed invention"*

c. The claimed subject matter does not state, *"which may or may not be concurrently available because of the operation of the claimed conditional access*

processor” nor is a specific relationship claimed between the scheduler and multiplexer elements and the authorization determination by the condition access processor. While the specification (as cited in the argument) discloses information relating to the conditional access processor and its interaction with the system of the Applicants’ invention, the MPEP 2106[R-2].II.C. states,

“Limitations appearing in the specification but not recited in the claim are not read into the claim. > E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted “in view of the specification” without importing limitations from the specification into the claims unnecessarily).”

As such, this argument is not specific to the claimed subject matter at this time.

Conclusion

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

29. U.S. Patent Application Publication 2002/0112029 by Gravina “System and method for accepting and integrating entertainment information from entertainment information producers” August 15, 2002. Discloses authorization and authentication techniques to verify the producer.

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

~~Any inquiry concerning this communication or earlier communications from the~~
examiner should be directed to David Lazaro whose telephone number is 703-305-4868 (571-272-3986 after October 27). The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on 703-308-6662. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Lazaro
September 23, 2004



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SUPERVISORY PATENT EXAMINER